

SENATE SUBSTITUTE
FOR
HOUSE BILL NO. 1361

AN ACT

To repeal sections 384.015, 384.017, 384.021, and 384.023, RSMo, and to enact in lieu thereof five new sections relating to domestic surplus lines insurers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 384.015, 384.017, 384.021, and 384.023,
2 RSMo, are repealed and five new sections enacted in lieu thereof,
3 to be known as sections 384.015, 384.017, 384.018, 384.021, and
4 384.023, to read as follows:

5 384.015. As used in sections 384.011 to 384.071, the
6 following terms shall mean:

7 (1) "Admitted insurer", an insurer licensed to do an
8 insurance business in this state;

9 (2) "Capital", funds paid in for stock or other evidence of
10 ownership;

11 (3) "Director", the director of the department of
12 insurance, financial institutions and professional registration;

13 (4) "Domestic surplus lines insurer", a nonadmitted insurer
14 that is domiciled in this state with which a surplus lines
15 licensee may place only surplus lines insurance;

16 (5) "Eligible surplus lines insurer", a nonadmitted insurer
17 with which a surplus lines licensee may place surplus lines
18 insurance;

1 [(5)] (6) "Exempt commercial purchaser", any person
2 purchasing commercial insurance that, at the time of placement,
3 meets the following requirements:

4 (a) The person employs or retains a qualified risk manager
5 to negotiate insurance coverage;

6 (b) The person has paid aggregate nationwide commercial
7 property and casualty insurance premiums in excess of one hundred
8 thousand dollars in the immediately preceding twelve months; and

9 (c) a. The person meets at least one of the following
10 criteria:

11 (i) The person possesses a net worth in excess of twenty
12 million dollars, as such amount is adjusted under subparagraph b.
13 of this paragraph;

14 (ii) The person generates annual revenues in excess of
15 fifty million dollars, as such amount is adjusted under
16 subparagraph b. of this paragraph;

17 (iii) The person employs more than five hundred full-time
18 or full-time equivalent employees per individual insured or is a
19 member of an affiliated group employing more than one thousand
20 employees in the aggregate;

21 (iv) The person is a not-for-profit organization or public
22 entity generating annual budgeted expenditures of at least thirty
23 million dollars, as such amount is adjusted under subparagraph b.
24 of this paragraph; or

25 (v) The person is a municipality with a population in
26 excess of fifty thousand persons.

27 b. Effective on the fifth January first occurring after the
28 date of the enactment of United States Public Law 111-203 and

1 each fifth January first occurring thereafter, the amounts in
2 items (i), (ii), and (iv) of subparagraph a. of this paragraph
3 shall be adjusted to reflect the percentage change for such
4 five-year period in the Consumer Price Index for All Urban
5 Consumers published by the United States Bureau of Labor
6 Statistic of the Department of Labor;

7 [(6)] (7) "Export", to place surplus lines insurance with a
8 nonadmitted insurer;

9 [(7)] (8) "Home state":

10 (a) Except as provided in paragraph (b) of this
11 subdivision, the term "home state" means, with respect to an
12 insured:

13 a. The state in which an insured maintains its principal
14 place of business or, in the case of an individual, the
15 individual's principal residence; or

16 b. If one hundred percent of the insured risk is located
17 out of the state referred to in subparagraph a. of this
18 paragraph, the state to which the greatest percentage of the
19 insured's taxable premium for that insurance contract is
20 allocated;

21 (b) If more [than one insured] insureds than one from an
22 affiliated group are named insureds on a single nonadmitted
23 insurance contract, the term "home state" means the home state,
24 as determined under paragraph (a) of this subdivision, of the
25 member of the affiliated group that has the largest percentage of
26 premium attributed to it under such insurance contract;

27 (c) The principal place of business is the state where the
28 insured maintains its headquarters and where the insured's

1 high-level officers direct, control and coordinate the business
2 activities of the insured;

3 [(8)] (9) "Kind of insurance", one of the types of
4 insurance required to be reported in the annual statement which
5 must be filed with the director by admitted insurers;

6 [(9)] (10) "Nonadmitted insurance", any property and
7 casualty insurance permitted to be placed directly or through a
8 surplus lines licensee with a nonadmitted insurer eligible to
9 accept such insurance;

10 [(10)] (11) "Nonadmitted insurer", an insurer not licensed
11 to do an insurance business in this state, including insurance
12 exchanges authorized under the laws of other states, but does not
13 include a risk retention group, as that term is defined in the
14 Liability Risk Retention Act of 1986 (15 U.S.C. Section
15 3901(a)(4));

16 [(11)] (12) "Producing broker", the individual broker or
17 agent dealing directly with the party seeking insurance;

18 [(12)] (13) "Qualified risk manager", shall have the same
19 meaning prescribed in the Nonadmitted and Reinsurance Reform Act
20 of 2010 (15 U.S.C. Section 8206);

21 [(13)] (14) "Surplus", funds over and above liabilities and
22 capital of the company for the protection of policyholders;

23 [(14)] (15) "Surplus lines insurance", any insurance of
24 risks resident, located or to be performed in this state,
25 permitted to be placed through a surplus lines licensee with a
26 nonadmitted insurer eligible to accept such insurance, other than
27 reinsurance, and life and health insurance and annuities;

28 [(15)] (16) "Surplus lines licensee", a person licensed to

1 place insurance on risks resident, located or to be performed in
2 this state with nonadmitted insurers eligible to accept such
3 insurance;

4 [(16)] (17) "Wet marine and transportation insurance":

5 (a) Insurance upon vessels, crafts, hulls and of interests
6 therein or with relation thereto;

7 (b) Insurance of marine builder's risks, marine war risks
8 and contracts of marine protection and indemnity insurance;

9 (c) Insurance of freights and disbursements pertaining to a
10 subject of insurance coming within this section; and

11 (d) Insurance of personal property and interests therein,
12 in the course of exportation from or importation into any
13 country, or in the course of transportation coastwise or on
14 inland waters, including transportation by land, water or air
15 from point of origin to final destination, in connection with any
16 and all risks or periods of navigation, transit or
17 transportation, and while being prepared for and while awaiting
18 shipment, and during any delays, transshipment, or reshipment
19 incident thereto.

20 384.017. Surplus lines insurance may be placed by a surplus
21 lines licensee if:

22 (1) Each insurer is an eligible surplus lines insurer;

23 (2) [Each insurer is authorized to write the type of
24 insurance in its domiciliary jurisdiction;

25 (3)] The full amount or kind of insurance is not obtainable
26 from admitted insurers who are actually transacting in this state
27 the class of insurance required by the insured. Insurance shall
28 be deemed obtainable within the meaning of this section if there

1 is available a market with admitted insurers that can supply the
2 insured's requirements both as to type of coverage and as to
3 quality of service. "Type of coverage", as used in this section,
4 refers to hazards covered and limits of coverage. "Quality of
5 security and service", as used in this section, refers to the
6 rating by a recognized financial service; and

7 ~~[(4)]~~ (3) All other requirements of sections 384.011 to
8 384.071 are met.

9 384.018. 1. A nonadmitted insurer that is domiciled in
10 this state will be deemed a domestic surplus lines insurer if all
11 of the following are satisfied:

12 (1) The insurer possesses policyholder surplus of at least
13 twenty million dollars;

14 (2) The insurer is an approved or eligible surplus lines
15 insurer in at least one jurisdiction other than this state;

16 (3) The board of directors of the insurer has passed a
17 resolution seeking to be a domestic surplus lines insurer in this
18 state; and

19 (4) The director has given written approval for the insurer
20 to be a domestic surplus lines insurer.

21 2. For the purposes of the federal Nonadmitted and
22 Reinsurance Act of 2010 (15 U.S.C. Section 8201), a domestic
23 surplus lines insurer shall be considered a nonadmitted insurer
24 as the term is defined in the Act with respect to risks insured
25 in this state.

26 3. A domestic surplus lines insurer is deemed an eligible
27 surplus lines insurer authorized to write any kind of insurance
28 that a nonadmitted insurer not domiciled in this state is

1 eligible to write.

2 4. Notwithstanding any other statute, the policies issued
3 in this state by a domestic surplus lines insurer shall be
4 subject to taxes assessed upon surplus lines policies issued by
5 nonadmitted insurers, including the surplus lines premium tax
6 under section 384.059, but will not be subject to other taxes
7 levied upon admitted insurers whether domestic or foreign,
8 including, but not limited to, taxes imposed by section 148.320.

9 5. Policies issued by a domestic surplus lines insurer are
10 not subject to protections of, or other provisions of the
11 Missouri property and casualty insurance guarantee association
12 act, or the Missouri life and health insurance guaranty
13 association act.

14 6. All financial and solvency requirements imposed by
15 chapters 374, 375, 379, and 382 upon domestic admitted insurers
16 shall apply to domestic surplus lines insurers unless domestic
17 surplus lines insurers are otherwise specifically exempted.

18 7. A domestic surplus lines insurer shall not be subject to
19 and shall be exempt from all statutory requirements relating to
20 insurance rating plans, policy forms, policy cancellation and
21 nonrenewal, and premium charged to the insured in the same manner
22 and to the same extent as a nonadmitted insurer domiciled in
23 another state.

24 8. The director may promulgate rules under section 374.045
25 and amend such rules relating to domestic surplus lines insurers
26 as are necessary to enable the director to carry out the
27 provisions of chapter 384.

28 384.021. 1. A surplus lines licensee shall not place

1 coverage with a nonadmitted insurer, unless, at the time of
2 placement, the surplus lines licensee has determined that the
3 nonadmitted insurer:

4 (1) Is authorized to write the kind of insurance in its
5 domiciliary jurisdiction and meets one of these criteria:

6 (a) Has capital and surplus or its equivalent under the
7 laws of its domiciliary jurisdiction, which equals the greater of
8 the minimum capital and surplus requirements under the laws of
9 this state or fifteen million dollars, except that the
10 requirements of this subdivision may be satisfied by an insurer's
11 possessing less than the minimum capital and surplus upon an
12 affirmative finding of acceptability by the director provided
13 that the finding shall be based upon such factors as quality of
14 management, capital and surplus of any parent company, company
15 underwriting profit and investment income trends, market
16 availability and company record and reputation within the
17 industry, and in no event shall the director make an affirmative
18 finding of acceptability when the nonadmitted insurer's capital
19 and surplus is less than four million five hundred thousand
20 dollars; [and] or

21 [(2)] (b) Appears on the most recent list of eligible
22 surplus lines insurers published by the director from time to
23 time but at least semiannually or on the most recent quarterly
24 listing of alien insurers maintained by the international
25 insurers department of the National Association of Insurance
26 Commissioners.

27 2. Notwithstanding any other provision of this chapter or
28 rules adopted to implement the provisions of this chapter, a

1 surplus lines licensee seeking to procure or place nonadmitted
2 insurance in Missouri for an exempt commercial purchaser shall
3 not be required to satisfy any requirement to make a due
4 diligence search to determine whether the full amount or type of
5 insurance sought by such exempt commercial purchaser can be
6 obtained from nonadmitted insurers if:

7 (1) The surplus lines licensee procuring or placing the
8 surplus lines insurance has disclosed to the exempt commercial
9 purchaser that such insurance may or may not be available from
10 the admitted market that may provide greater protection with more
11 regulatory oversight; and

12 (2) The exempt commercial purchaser has subsequently
13 requested in writing the surplus lines licensee to procure or
14 place such insurance from a nonadmitted insurer.

15 384.023. [Only that portion of any] Risk eligible for export
16 [for which the full amount of coverage is not procurable from
17 eligible surplus lines insurers] may be placed with any other
18 nonadmitted insurer which does not appear on the list of eligible
19 surplus lines insurers published by the director pursuant to
20 paragraph (b) of subdivision [(4)] (1) of subsection 1 of section
21 384.021 but nonetheless meets the requirements set forth in
22 paragraph (a) of [subdivisions (1) to (3)] subdivision (1) of
23 subsection 1 of section 384.021 and [any] related complying
24 regulations of the director. The surplus lines licensee seeking
25 to provide coverage through an unlisted nonadmitted insurer shall
26 make a filing specifying the amount and percentage of each risk
27 to be placed, and naming the nonadmitted insurer with which
28 placement is intended and shall pay the tax due pursuant to

1 section 384.059. Within twenty days after placing the coverage,
2 the surplus lines licensee shall also send written notice to the
3 insured or the producing broker that the insurance, or a portion
4 thereof, has been placed with such nonadmitted insurer.

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